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08/069,317	06/01/93	VIANO	D 811082

35M1/0203
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EXAMINER
NELSON, J. H.

ART UNIT PAPER NUMBER

3507

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DATE MAILED: 02/03/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input checked="" type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1448. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-11 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-5 and 8-11 are rejected.
5. ☒ Claims 6 and 7 are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on _____, has been ☐ approved ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

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Part III DETAILED ACTION

Specification

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
2. The disclosure is objected to because of the following informalities: Inconsistent assignment of element numbers. On page 2 of the specification, the element number 7 is assigned to "the vehicle seat and headrest arrangement" (line 2) as well as "the seat" (line 5). In addition, the element number 4 is assigned to the "cross frame member" (line 8) as well as "the seat bun and back frames" (line 8). Appropriate correction is required.
3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 C.F.R. § 1.75(d)(1) and M.P.E.P. § 608.01(1). Correction of the following is required: The cross member being non-fixed with respect to the post (see claim 7).

Claim Rejections - 35 USC § 112

4. Claims 5 and 9 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

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regards as the invention. In claim 5, Applicant should clarify whether or not "a spring" is the same element as that spring in claim 4 from which claim 5 depends. In claim 9, "the post", "the center of rotation of the post", and "the frame cross member" lack proper antecedent basis.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4 and 5 are rejected under 35 U.S.C. § 102(b) as being anticipated by Long ('552). Note the uppermost portion of the backrest, which conventionally serves as a headrest for a user, and the spring 9.

7. Claims 1, 2, 8, and 9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Caron ('012). Note the post 19 and the effective upward extension in Figure 1. Also note the rearward extension of the post relative to the center of rotation of the post.

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Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

9. Claims 10 and 11 are rejected under 35 U.S.C. § 103 as being unpatentable over Long. Note the statement of the 35 U.S.C. § 102(b) rejection above, as Long shows all claimed structural features of the instant invention. It would have been obvious, if not inherent, for one having ordinary skill in the pertinent art at the time of the instant invention to provide the headrest of Long for a vehicle seat by the method claimed.

10. Claims 10 and 11 are rejected under 35 U.S.C. § 103 as being unpatentable over Caron. Note the statement of the 35 U.S.C. § 102(b) rejection above, as Caron shows all claimed structural features of the instant invention. It would have been obvious, if not inherent, for one having ordinary skill in the pertinent

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art at the time of the instant invention to provide the headrest of Caron for a vehicle seat by the method claimed.

11. Claims 1-3, 8 and 9 are rejected under 35 U.S.C. § 103 as being unpatentable over Herzer et al ('241). Herzer et al.

discloses the claimed invention except for a specific seat bun frame means. Note the pivoting means 21, post 10, and clamp

5,6. It would have been obvious to one having ordinary skill in the pertinent art at the time the instant invention was made to provide the structure of Herzer et al. with a seat bun frame means since it was known in the art that such a frame means is conventionally provided with a seat back member to support the lower region of a user.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 86 S.Ct. 684, 15 L.Ed. 2nd 545 (1966), 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. § 103 are summarized as follows:

1. Determining the scope and contents of the prior art;
2. Ascertaining the differences between the prior art and the claims at issue; and
3. Resolving the level of ordinary skill in the pertinent art.

Allowable Subject Matter

13. Claims 6 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in

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independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pivoting headrest assemblies are disclosed by Klaus ('180), Spound et al ('029), Smith ('723), Goldner ('779), Andres et al ('166), Vidwans et al ('107), Patrick ('366), DT ('485), DT ('572), and DT ('633).

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Nelson, whose telephone number is (703) 308-2168.


KENNETH J. DORNER
SUPERVISORY PATENT EXAMINER
ART UNIT 357


MN
January 22, 1994